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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,243	04/04/2005	Shuhei Kurata	P1293US	2656

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CASELLA & HESPOS
274 MADISON AVENUE
NEW YORK, NY 10016

EXAMINER

CRAIG, PAULA L

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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01/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,243

Applicant(s)

KURATA ET AL.

Examiner

Paula L. Craig

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,8 and 12-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,8 and 12-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 29, 2007 has been entered.

Response to Arguments

2. Applicant's arguments filed October 29, 2007 with respect to Claims 1, 8, and 12-25 have been considered but are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1, 8, and 12-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hermansson (US 2002/0010455) in view of Popp (US 6,635,041)
5. For Claim 1, Hermansson teaches a disposable wearing article including an absorbent body having opposite front and rear ends and opposite first and second sides extending between the ends (absorbent body includes absorbent body 4, Figs. 1-3 and paragraphs 1 and 13). A pair of right and left primary elastic members is attached to a cover sheet that is attached to a back portion of the absorbent body (left primary elastic member is the left half of elastic means 11a, 11b, and 11c; right primary elastic member is the right half of elastic means 11a, 11b, and 11c; cover sheet includes backsheet 2 and topsheet 3; Figs. 2-3 and paragraphs 13-14 and 17-24, and Claims 3 and 12; note that the first second and third elastic means 11a, 11b, and 11c consist of two symmetric elastic means 11, which extend parallel along the crotch portion and diverge at 1st and 2d points 13 and 14). Hermansson teaches that the primary elastic members are pre-stressed (Abstract, paragraph 17, Claim 1). Each of the primary elastic

members has an approximately linear portion in an approximately laterally central zone of the back portion inwardly of the opposite first and second sides, keeping such a constant distance from the other primary elastic member as to **allow** a central zone of a skin-side surface of the absorbent body between the right and left primary elastic members to be formed as a linear raised portion by an action of a contractile force in the approximately linear portion and independent of any forces exerted by a wearer (linear portion includes 2d elastic means 11b between 1st and 2d points 13 and 14; linear raised portion includes the area between the right and left halves of elastic means 11 of 2d elastic means 11b; Figs. 2-3, paragraphs 17, 21-24, Claims 3 and 12; note that the term "allow" requires no more than the ability to so perform under at least some conditions). Hermansson teaches each of the primary elastic members having at least one divergent portion extending from the approximately linear portion towards at least one of the front and rear ends of the absorbent body and outwardly to define at least one divergent pattern and to **allow** a divergent zone of the skin-side surface of the absorbent body in the divergent pattern to be formed as a divergent raised portion by an action of a contractile force in the divergent portion, the divergent raised portion being contiguous to the linear raised portion (the divergent portion includes 1st and 3rd elastic means 11a and 11c; Figs. 2-3, paragraphs 17-24, Claims 3 and 12; the divergent raised portion includes the area between the right and left halves of elastic means 11 of 1st and 3rd elastic means 11a and 11c; note that the term "allow" requires no more than the ability to so perform under at least some conditions). Hermansson does not expressly teach that the right and

left primary elastic members are bonded in their stretched state. However, bonding of elastic members in their stretched state is well known in the art. Popp confirms this and teaches bonding of elastic members in their stretched state (Figs. 4-9, col. 7, lines 8-38, col. 8, line 12 to col. 10, line 36). Popp teaches that bonding of elastic members in their stretched state yields greater tension in the elastic member subsequent to the bonding process, which allows the tension to be adjusted as required (col. 7, line 8 to col. 8, line 11). In addition, the limitation of how the elastic members are bonded may be treated as a product by process limitation. As set forth in MPEP 2113 product by process claims are not limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 U.S.C. 102 and/or 103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. See MPEP 2113. See *In re Thorpe*, 227 USPQ 964 (Fed Cir. 1985), and *Ex parte Masham*, 2 USPQ2d 1647 (BPAI 1987). In light of Hermansson's teaching that the elastic members are "pre-stressed," it would have been obvious to one of ordinary skill in the art at the time of the invention for the elastic members of Hermansson to be bonded in their stretched state, as taught by Popp, to yield greater tension in the elastic member and allow the tension to be adjusted as required, as taught by Popp.

6. For Claim 8, Hermansson teaches a disposable wearing article including a cover sheet having opposite front and rear ends and opposite first and second sides extending between the ends (cover sheet includes backsheet 2 and topsheet 3; Figs. 1-3, paragraphs 1, 13-14 and 17). An absorbent body has

opposite front and rear ends and opposite first and second sides extending between the ends of the absorbent body and attached on a skin-side surface of the cover sheet (absorbent body includes absorbent body 4, which is attached on a skin-side surface of backsheet 2; Figs. 1-3 and paragraphs 13-15, 17). A pair of right and left primary elastic members is attached to a cover sheet (left primary elastic member is the left half of elastic means 11a, 11b, and 11c; right primary elastic member is the right half of elastic means 11a, 11b, and 11c; cover sheet includes backsheet 2 and topsheet 3; Figs. 2-3 and paragraphs 13-14 and 17-24, and Claims 3 and 12; note that the first second and third elastic means 11a, 11b, and 11c consist of two symmetric elastic means 11, which extend parallel along the crotch portion and diverge at 1st and 2d points 13 and 14). Hermansson teaches that the primary elastic members are pre-stressed (Abstract, paragraph 17, Claim 1). Each of the primary elastic members has an approximately linear portion in an approximately laterally central zone of the cover sheet inwardly of the opposite first and second sides of the absorbent body, keeping such a constant distance from the other primary elastic member as to **allow** a central zone of a skin-side surface of the cover sheet between the right and left primary elastic members to be formed as a linear raised portion by an action of a contractile force in the approximately linear portion and independent of any forces exerted by a wearer (linear portion includes 2d elastic means 11b between 1st and 2d points 13 and 14; linear raised portion includes the area between the right and left halves of elastic means 11 of 2d elastic means 11b; Figs. 2-3, paragraphs 14, 17, 21-24, Claims 3 and 12; note that the

term "allow" requires no more than the ability to so perform under at least some conditions). Hermansson teaches each of the primary elastic members having at least one divergent portion extending from the approximately linear portion towards at least one of the front and rear ends of the cover sheet and outwardly to define at least one divergent pattern and to **allow** a divergent zone of the skin-side surface of the cover sheet in the divergent pattern to be formed as a divergent raised portion by an action of a contractile force in the divergent portion, the divergent raised portion being contiguous to the linear raised portion (the divergent portion includes 1st and 3rd elastic means 11a and 11c; the divergent raised portion includes the area between the right and left halves of elastic means 11 of 1st and 3rd elastic means 11a and 11c; Figs. 2-3, paragraphs 14 and 17-24, Claims 3 and 12; note that the term "allow" requires no more than the ability to so perform under at least some conditions). Hermansson does not expressly teach that the right and left primary elastic members are bonded in their stretched state. However, bonding of elastic members in their stretched state is well known in the art. Popp confirms this and teaches bonding of elastic members in their stretched state (Figs. 4-9, col. 7, lines 8-38, col. 8, line 12 to col. 10, line 36). Popp teaches that bonding of elastic members in their stretched state yields greater tension in the elastic member subsequent to the bonding process, which allows the tension to be adjusted as required (col. 7, line 8 to col. 8, line 11). In addition, the limitation of how the elastic members are bonded may be treated as a product by process limitation. As set forth in MPEP 2113 product by process claims are not limited to the manipulations of the recited

steps, only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 U.S.C. 102 and/or 103 rejection may be made and the burden is shifted to applicant to show an unobvious difference, as described above for Claim 1 in paragraph 5. In light of Hermansson's teaching that the elastic members are "pre-stressed," it would have been obvious to one of ordinary skill in the art at the time of the invention for the elastic members of Hermansson to be bonded in their stretched state, as taught by Popp, to yield greater tension in the elastic member and allow the tension to be adjusted as required, as taught by Popp.

7. For Claims 12 and 15, Hermansson teaches the at least one divergent portion including a front divergent portion extending from a front end of the linear portion substantially to the front end of the absorbent body or of the cover sheet (front divergent portion includes 1st elastic means 11a; absorbent body includes absorbent body 4; cover sheet includes backsheet 2 and topsheet 3; Figs. 2-3, paragraphs 13, 17-24).

8. For Claims 13 and 16, Hermansson teaches the at least one divergent portion including a rear divergent portion extending from a rear end of the linear portion substantially to the rear end of the absorbent body or of the cover sheet (rear divergent portion includes 3rd elastic means 11c; Figs. 2-3, paragraphs 13, 17-24).

9. For Claims 14 and 17, Hermansson teaches the at least one divergent portion including front and rear divergent portions extending from opposite front and rear ends of the linear portion substantially towards the respective front and

rear ends of the absorbent body or of the cover sheet (front divergent portion includes 1st elastic means 11a; rear divergent portion includes 3rd elastic means 11c; absorbent body includes absorbent body 4; cover sheet includes backsheet 2 and topsheet 3; Figs. 2-3, paragraphs 13, 17-24).

10. For Claim 18, Hermansson teaches the at least one cover sheet including an outer cover sheet and a skin-side cover sheet (outer cover sheet includes backsheet 2; skin-side cover sheet includes topsheet 3; Figs. 1-3, paragraphs 13-14). The right and left primary elastic members are attached between the outer cover sheet and the skin-side cover sheet (paragraphs 13-14 and 17-18). The outer cover sheet and the skin-side cover sheet are bonded to one another in a superimposed manner (Figs. 1-3, paragraphs 13-14 and 17-18).

Hermansson teaches that the primary elastic members are pre-stressed (Abstract, paragraph 17, Claim 1). Hermansson does not expressly teach that the right and left primary elastic members are attached in the stretched state. However, bonding of elastic members in their stretched state is well known in the art. Popp confirms this and teaches bonding of elastic members in their stretched state (Figs. 4-9, col. 7, lines 8-38, col. 8, line 12 to col. 10, line 36). Popp teaches that bonding of elastic members in their stretched state yields greater tension in the elastic member subsequent to the bonding process, which allows the tension to be adjusted as required (col. 7, line 8 to col. 8, line 11). In light of Hermansson's teaching that the elastic members are "pre-stressed," it would have been obvious to one of ordinary skill in the art at the time of the invention for the elastic members of Hermansson to be bonded in their stretched

state, as taught by Popp, for the same reasons as described above for Claim 1 in paragraph 5.

11. For Claim 19, Hermansson teaches all of the right and left primary elastic members being between the outer cover sheet and the skin-side cover sheet (outer cover sheet includes backsheet 2; skin-side cover sheet includes topsheet 3; Figs. 1-3, paragraphs 1, 13-14 and 17-18).

12. For Claim 20, Hermansson teaches the cover sheet having an outer surface opposite the skin-side surface (cover sheet includes backsheet 2 and topsheet 3; Figs. 1-3, paragraphs 13-14 and 17-18). Hermansson teaches the right and left primary elastic members being bonded to the outer surface of the cover sheet so that substantially all of each of the right and left primary elastic members is attached to the outer surface of the cover sheet (Figs. 1-3, paragraphs 13-14 and 17-24; note that the claim does not require direct bonding or direct attachment).

13. For Claim 21, Hermansson teaches the cover sheet being a skin-side cover sheet (cover sheet includes backsheet 2 and topsheet 3, Figs. 1-3, paragraphs 13-14 and 17). The disposable wearing article includes an outer cover sheet superimposed on the outer surface of the skin-side cover sheet and bonded to the skin-side cover sheet so that essentially all of the right and left primary elastic members are between the skin-side cover sheet and the outer cover sheet (outer cover sheet includes backsheet 2; elastic means 11 are between backsheet 2 and topsheet 3; Figs. 1-3, paragraphs 1, 13-14 and 17).

14. For Claims 22 and 23, the article of Hermansson is fully capable of having the divergent raised portion formed by the action of the contractile force of the primary elastic members in the divergent portion independent of forces exerted by the wearer (Figs. 2-3, paragraphs 17-25).

15. For Claims 24 and 25, Hermansson teaches no elastic members bonded in a stretched state to the cover sheet at locations between the right and left primary elastic members (Figs. 2-3, paragraphs 13-14 and 17-25 and Claims 3 and 12; no elastic members are indicated between the left and right halves of elastic means 11a, 11b, and 11c).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571) 272-5964. The examiner can normally be reached on M-F 8:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Paula L Craig
Examiner
Art Unit 3761

PLC

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

